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C.S.No.122 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

C.S.No.122 of 2017

1. Badam Kavar, (Deceased)
W/o. Late Laduram Chhajed,
represented by her Power of Attorney Agents,
 1. Gumanmal Jain
 2. Varun Jain,Office at "Rain Forest", Flat No.A-1,
No.57, Rems Street, Taylors Road,
Kilpauk, Chennai – 600 010.
2. Deepak Jain
3. VarunJain ... Plaintiffs
[Plaintiffs 2 and 3 are brought on record as L.R's of
Sole Plaintiff as per order dated 24.03.2015 in
A.No.2084 to 2089 of 2015.]

..VS..

1. N.S.Rathinam & Sons,
Partnership firm rep. by its Partner,
R.Chandrasekaran,
No.32 & 34, Vijaya Narayana Doss Road,
Anna Salai, Chennai – 600 002.
2. R.Chandrasekaran

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3. R.Akkammal

4. A.Jayaprakash

... Defendants

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC praying to pass the judgment and decree,

(a) Granting preliminary decree for a sum of Rs.1,32,75,000/- directing the defendants 1 to 4 herein to pay the plaintiff the aforesaid sum together with interest at 24% p.a. From the date of plaint till the date of actual payment within such time as may be granted by this Court;

(b) To grant liberty to the plaintiff, in default of payment under Clause (a) above, to file application for final decree to bring the suit schedule mentioned property (mortgaged property) for sale through Court and permit the plaintiff herein to appropriate the sale proceeds towards the amount which was recoverable from the defendants 1 to 3 herein and in the event of any shortfall in the said sale proceeds, permit the plaintiff to apply for final decree against the defendants 1 to 4;

(c) To direct the defendants to pay the costs of the suit to the plaintiff: and

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(d) To pass such further or other orders as this Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Plaintiff : Ms.A.L.Gandhimathi

JUDGMENT

This is a suit based on mortgage.

2. The case of the plaintiffs is that the first defendant is a partnership firm, and second and third defendants are partners in the first defendant's firm. The first to third defendants borrowed a sum of Rs.5,00,000/- on 15.09.2003 which was acknowledged by the defendants and a Demand Promissory Note undertaking to repay the amount with interest at the rate of 24% per annum. On the same day, first to third defendants borrowed a sum of Rs.50,000/- and executed a Demand Promissory Note undertaking to repay the amount with interest at 24% per annum. On 14.01.2004, the first to third defendants borrowed a sum of Rs.5,00,000/- from the first plaintiff and executed a Demand



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Promissory Note undertaking to repay the amount with interest at 24% per annum. On 25.08.2004, the first to third defendants borrowed a sum of Rs.13,00,000/- from the first plaintiff and executed a Demand Promissory Note, undertaking to repay the amount with interest at 24% per annum. On 27.09.2004, the first to third defendants borrowed a sum of Rs.5,00,000/- from the first plaintiff and executed a Demand Promissory Note, undertaking to repay the amount with interest at 24% per annum. Again on 10.03.2005, the first to third defendants borrowed a sum of Rs.10,00,000/- from the first plaintiff and executed a Demand Promissory Note, undertaking to repay the amount with interest at 24% per annum. Then on 20.04.2005, the first to third defendants borrowed a sum of Rs.10,00,000/- from the first plaintiff and executed a Demand Promissory Note, undertaking to repay the amount with interest at 24% per annum.

3. The defendants as partners of the first defendant's firm had borrowed these amounts for the purpose of business of the first defendant. The first to third defendants have made staggered payments



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from time to time. The plaintiffs insisted the first to third defendants to furnish some security for the due repayment of the loan amounts. At the request of the first to third defendants, the fourth defendant deposited the title deeds in respect of his property comprised in Survey No.224/1 measuring an extent of 8,524 sq.ft in No.5, Vilingiambakkam Village, security by way of Equitable Mortgage for due repayment of the loan amounts. The Memorandum of deposit of title deed was executed on 29.11.2006 confirming the deposit of title deeds, which was registered as Document No.10376 of 2006 in the Office of the Sub Registrar, Avadi. The documents were deposited by the fourth defendant with an intention to create security in favour of the plaintiffs for due repayment of the amounts borrowed by the first defendant's firm to the tune Rs.51,50,000/- together with interest and other liabilities. Cheques which were issued in part to discharge of the aforesaid debts were returned dishonoured. Therefore, the plaintiffs have been constrained to initiate proceedings under Section 138 of the Negotiable Instruments Act against the first to third defendants before the VII Metropolitan Magistrate Court, George Town, Chennai in C.C.No.573 of 2009, C.C.No.3766 of 2009,



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C.C.No.3767 of 2009 and C.C.No.3768 of 2009.

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4. On 19.09.2007, the second defendant had written a letter of acknowledgment to the first plaintiff and M/s.Jain & sons (HUF) at Chennai in respect of the transactions referred to in this plaint and certain other transactions. Admitting the borrowings, he undertook to repay the amounts to the plaintiffs. However, the defendants failed and neglected to pay the amounts. Thus, the plaintiffs issued a legal notice to first to fourth defendants on 08.09.2013 demanding payment of a sum of Rs.1,31,31,000/- with subsequent interest. The first to third defendants received the notice. Notice sent to the fourth defendant is not returned either served or unserved. In such circumstances, this suit is filed for the recovery of a sum of Rs.1,32,75,000/- with interest at 24% per annum from the date of the plaint till the date of recovery of the amount and for costs.

5. The learned counsel for the plaintiffs submitted that the defendants in this case were set *ex-parte* and thereafter PW1 was



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examined and exhibits P1 to P21 have been marked in proof of the case of the plaintiffs. The oral and documentary evidence of PW1 and exhibits P1 to P21 clearly proves the borrowal by the first to third defendants, execution of Mortgage, in respect of the suit properties by depositing the title deeds by the fourth defendant towards discharging of the loan amounts and therefore, he prayed for decree as claimed by the plaintiffs.

6. Considered the submissions and perused the records.

7. Exhibit P1 is the certified copy of the power of attorney dated 03.05.2005. Exhibit P2 is the certified copy of the Promissory Notes executed by the first to third defendants in favour of the plaintiff dated 15.09.2003. Exhibits P3 to P7 are the certified copies of the promissory note executed by the first to third defendants in favour of the plaintiff dated 14.01.2004, 25.08.2004, 27.09.2004, 11.03.2005 and 20.04.2005 respectively. It is submitted by the learned counsel for the plaintiffs that original promissory note have been filed under Section 138 of the Negotiable Instruments Act and therefore certified copies are produced.



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8. Exhibit P8 is the original memorandum of deposit of title deeds executed by the fourth defendant in favour of the plaintiff dated 29.11.2006. Exhibits P9 to 13 are the documents filed in support of execution of Memorandum of deposit by way of title deeds. Exhibits P14 to P17 are the office copies of the complaint in CC.No.573, 3766, 3767, 3768 of 2009 respectively. Exhibit P18 is the original letter sent by the second defendant to the plaintiff dated 19.09.2007. Exhibit P19 is the office copy of the legal notice issued by the plaintiff. Exhibit P20 is the copy of the original ledger. Exhibit P21 is the encumbrance certificate.

9. It is seen from the Exhibits P1 to P7 that the first to third defendants had borrowed the amount mentioned in these promissory notes and it is seen from Exhibit P8 that fourth defendant had executed the Memorandum of deposit of title deeds for creating Equitable Mortgage by depositing the title deeds. It is seen from Exhibit P18 that in a letter addressed by second defendant to the plaintiffs and another firm M/s.Jain & sons (HUF), he acknowledged the loan obtained from the



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plaintiffs in Exhibits P2 to P7 promissory notes. Infact, he undertook to repay the amount after developing the lands into housing plots. It is also seen that first plaintiff initiated criminal proceedings for dishonouring of cheque issued for discharging the loan amounts.

10. Thus, on perusing the oral and documentary evidence, this Court comes to a conclusion that the plaintiffs have proved the suit claim and a decree is passed for a sum of Rs.1,32,75,000/- against the defendants 1 to 4, the plaintiffs are also entitled for interest at 6% per annum from the date of plaint till the date of realization of amount on the principal amount of Rs.51,50,000/- with proportionate costs. Time for payment is three months. Failing payment, the plaintiffs are entitled to proceed with the final decree proceeding for selling the property for realizing the decree amount.

11. In the result, C.S.No.122 of 2017 is decreed by directing the defendants 1 to 4 to pay a sum of Rs.1,32,75,000/- to the plaintiffs within a period of three months. Accordingly a preliminary decree is



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passed. In the event of default, the plaintiffs are entitled to take appropriate steps to bring the suit schedule property for sale to realize the amount due i.e., Rs.1,32,75,000/- from the sale proceeds, the expenses incurred in bringing the property for sale, along with interest accruals on the principal sum at 6% per annum from the date of decree until realisation and costs. If the amount realized from the sale proceeds is insufficient for such purposes, the plaintiffs are entitled to enforce the decree against defendants 1 to 4.

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List of witness examined on the side of the plaintiffs:-

PW.1 - Mr.Deepak Jain

List of Exhibits marked on the side of the plaintiffs:-

<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.P1	03.05.2005	xerox copy of the power of attorney executed by 1 st plaintiff in favour of Gumanmal Jain, 2 nd plaintiff and 3 rd plaintiff herein.
Ex.P2	15.09.2003	Series (2 Nos) is the certified copy of the promissory notes executed by the defendants 1 to 3



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		in favour of the 1 st plaintiff.
Ex.P3	14.01.2004	Certified copy of the promissory note executed by the defendants 1 to 3 in favour of the 1 st plaintiff.
Ex.P4	25.08.2004	Certified copy of the promissory note executed by the defendants 1 to 3 in favour of the 1 st plaintiff and Gumanmal Jain.
Ex.P5	27.09.2004	Original promissory note executed by the defendants 1 to 3 in favour of the 1 st plaintiff.
Ex.P6	11.03.2005	Certified copy of the promissory note executed by the defendants 1 to 3 in favour of the 1 st plaintiff.
Ex.P7	20.04.2005	Certified copy of the promissory note executed by the defendants 1 to 3 in favour of the 1 st plaintiff.
Ex.P8	29.11.2006	Original memorandum of deposit of title deeds executed by the 4 th defendant in favour of the 1 st plaintiff and Gumanmal Jain.
Ex.P9	29.06.1911	certified copy of the registered sale deed (Doc. No.1028/1911).
Ex.P10	27.06.1988	Certified copy of the registered sale deed (Doc. No.5153/1988).
Ex.P11	05.07.1990	Certified copy of the registered sale deed (Doc. No.3871/1990).
Ex.P12	30.04.2006	Original family arrangement between the 4 th defendant and his family members.
Ex.P13	24.05.2006	Original release deed dated 24.05.2006 executed in



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		favour of the 4 th defendant.
Ex.P14	13.03.2009	Office copy of the complaint in CC.No.573 of 2009.
Ex.P15	21.04.2009	Office copy of the complaint in CC.No.3766 of 2009.
Ex.P16	21.04.2009	Office copy of the complaint in CC.No.3767 of 2009.
Ex.P17	21.04.2009	Office copy of the complaint in CC.No.3768 of 2009.
Ex.P18	19.09.2007	Original letter sent by the 2 nd defendant to the plaintiff.
Ex.P19	08.03.2013	Office copy of the legal notice issued by the plaintiffs to defendants along with 3 acknowledgment cards and postal receipts.
Ex.P20	15.04.2013	Extract of the original ledger relating to 4 th defendant.
Ex.P21	19.03.2013	Original Encumbrance certificate relating to S.No.224 etc. of Vzhingiyambakkam Village, for 21 years from 20.12.1993 to 17.03.2013.

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Internet: Yes

Index : Yes/No

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Speaking/Non speaking order



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G.CHANDRASEKHARAN, J.,

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